



1401 H Street NW
Suite 600
Washington DC
20005-2164

Tel (202) 326-7300
Fax (202) 326-7333
www.usta.org

December 3, 2002

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW B204
Washington, D.C. 20554

EX PARTE PRESENTATION

Re: Numbering Resource Optimization; Telephone Number Portability
 Further Notices of Proposed Rulemaking
 CC Docket Nos. 99-200 and 95-116

Dear Ms. Dortch:

The undersigned, on behalf of the United States Telecom Association, submits this *Ex Parte* Presentation in the above-referenced proceedings in response to the November 4, 2002, submission of the National Association of Regulatory Utility Commissioners (NARUC Submission). I request that you include this presentation in the records of the above-referenced proceedings. It is being filed electronically under their respective docket numbers.

The NARUC Submission asks the Federal Communications Commission (FCC) “to act quickly in the above captioned proceeding to affirm its earlier December 2001 finding that ALL carriers in the top 100 MSA[s] meet the current pooling and porting deadlines, regardless of whether they have received a specific request (‘BFR’) from another carrier to provide LNP.”¹ In its *Reconsideration Order*,² the FCC, on its own motion, reconsidered and set aside its findings in the *NRO Third Report and Order* regarding the local number portability (LNP) and thousands-block number pooling requirements for carriers in the 100 largest Metropolitan Statistical Areas (MSAs). The FCC’s reconsideration resulted from its failure to provide interested parties an adequate opportunity to comment on those findings before they were adopted. NARUC wants the FCC to reinstate its earlier findings that all carriers in the top 100 MSAs be LNP capable and participate in thousands-block number pooling regardless of whether they have received a bona fide request for LNP.³ NARUC has failed to demonstrate in its Submission how the public interest will be served by requiring carriers to incur costs to implement LNP and thousands-block

¹ See Numbering Resource Optimization, *Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200*, FCC 01-362 (rel. Dec. 28, 2001) (*NRO Third Report and Order*).

² Numbering Resource Optimization, *Third Order on Reconsideration*, CC Docket No. 99-200, FCC 02-73 (rel. Mar. 14, 2002) (*Reconsideration Order*).

³ Currently, FCC Rule 52.20(b) (47 C.F.R. § 52.20(b)) only requires that carriers capable of providing LNP must participate in thousands-block number pooling “where it is implemented and consistent with the national thousands-block number pooling framework established by the Commission.”

number pooling in the absence of a bona fide request for LNP. Absent a bona fide request for LNP, there is no reason to believe that a competitor is prepared to enter the local exchange market of an incumbent and compete for customers or that any material number conservation benefits can be derived from mandatory thousands-block number pooling.⁴ Accordingly, USTA opposes NARUC's request and supports retention of the FCC's existing rules for LNP capability in the top 100 MSAs upon receipt of a bona fide LNP request and thousands-block number pooling participation upon achieving LNP capability.

USTA continues to support LNP deployment where the existence of competition provides a justification for its deployment and where carriers that are required to deploy LNP are allowed to recover their costs on a competitively neutral basis. USTA also continues to support reasonable and cost-effective number conservation measures where provisions exist for sufficient and prompt cost recovery for carriers required to participate in conservation measures such as thousands-block number pooling. USTA opposes mandatory LNP deployment in areas where there is no demand for it. Likewise, USTA opposes mandatory participation in thousands-block number pooling absent a carrier having already deployed LNP capability. A change in the FCC's current rules concerning LNP capability in the top 100 MSAs upon receipt of a bona fide request and thousands-block number pooling participation upon achieving LNP capability would only impose substantial costs on carriers without producing a corresponding public benefit.

NARUC recites the generally accepted justifications for LNP and thousands-block number pooling (allowing customers to respond to price and service changes without changing their telephone numbers and alleviating number shortages by enabling the transfer of unused numbers among carriers that need them) in support of its request for regressive FCC action. It fails to address the fact that until a second carrier enters the market and is prepared to serve customers, there are no alternative price or service changes to which customers can respond. Further, the benefits of thousands-block number pooling are only realized when there are multiple carriers operating within a rate center with which to pool. As to both LNP capability and thousands-block number pooling participation, public benefit is realized when multiple carriers are competing in the same local service area. The most logical and practical evidence of such local competition is a bona fide request for LNP from a new market entrant. The FCC acknowledged this in the *LNP First Reconsideration Order* where it concluded that "limiting deployment to switches in which a competitor expresses interest in number portability will address the concerns of smaller and rural LECs with end offices in the 100 largest MSAs that they may have to upgrade their networks at significant expense even if no competitors desire

⁴ While it may be possible to participate in thousands-block number pooling without fully implementing LNP, both require the same underlying switch functionality and drive virtually the same switch upgrade costs. It was this fact that resulted in the FCC tying the obligation to participate in thousands-block number pooling to carrier deployment of LNP capability.

portability.”⁵ Nothing has been presented in this proceeding by NARUC, or any other interested party, that renders this conclusion less valid today or justifies requiring carriers to incur the expense of deploying LNP capability in the top 100 MSAs absent a bona fide request. NARUC’s request that the FCC reaffirm its now rescinded findings in the *NRO Third Report and Order* should be denied. Reaffirmation would be nothing less than gratuitous regulation.

In addition to supporting retention of FCC Rules 52.20(b) and 52.23(b)⁶ with respect to wireline carriers, USTA also advocates the following positions:

1. USTA opposes expansion of LNP deployment requirements outside of the top 100 MSAs.
2. USTA opposes LNP obligations for wireless carriers.
3. USTA opposes expansion of thousands-block number pooling to NPAs outside of the top 100 MSAs.
4. Where an NPA encompasses areas both inside and outside of one of the top 100 MSAs, thousands-block number pooling should only be required in those rate centers in the NPA that are a part of the MSA.
5. The FCC should not expand the top 100 MSAs to include the Consolidated Metropolitan Statistical Areas identified in the 2000 Census.⁷
6. Carriers required to deploy LNP capability and/or participate in thousands-block number pooling should be permitted recovery of all costs associated with their deployment and/or participation by the regulatory entity imposing the requirement.

⁵ Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7273 (1997) (*LNP First Reconsideration Order*).

⁶ 47 C.F.R. § 52.23(b).

⁷ Such an expansion would increase the burdens on carriers without producing significant number conservation benefits.

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USTA respectfully disagrees with the position presented in the NARUC Submission. NARUC's position would increase costs for carriers without producing a corresponding public benefit. Accordingly, NARUC's request for FCC reinstatement of the findings from the *NRO Third Report and Order* should be rejected.

Sincerely,

A handwritten signature in black ink, reading "Lawrence E. Sarjeant". The signature is written in a cursive style with a large, stylized "L" and "S".

Lawrence E. Sarjeant
Vice President – Law
and General Counsel

cc: Matthew Brill
Jordan Goldstein
Daniel Gonzalez
Christopher Libertelli
William Maher
Pam Slipakoff